



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.22864 of 2021

Gowthaman

...Petitioner

Versus

State rep.by
The IOP,
CCB II, Chennai,
(Crime No.160 of 2019)

...Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 09.11.2021 in Crl.M.P.No.624 of 2021 passed by the Learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu and allow the above recall petition in Crl.M.P.No.624 of 2021 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chengalpattu.

For Petitioner : Mr.G.Magesh Kumar

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

The petitioner, who is the accused in Spl.S.C.No.7 of 2020 and who is facing trial for offences under Sections 12 r/w11 (3)(4) of POCSO Act and Section 67 of the Information Technology Act, has filed this petition.

2.The grievance of the petitioner is that he filed a petition in Crl.M.P.No.624 of 2021 seeking to examine himself as defence witness, in this case. The trial Court dismissed the same, for the reason that the defence evidence was earlier closed on 26.08.2021. Hence, the petition was not entertained, against which, the present petition.

3.The learned counsel for the petitioner submits that the petitioner, during investigation, had produced the screenshot of Whatsapp relating to the mobile number involved in this case along with Section 65-B Certificate to disclose the allegations made against him and also prove his innocence. Further, the petitioner has to necessarily dislodge the statutory presumption by producing the evidence. In this



case, the petitioner intends to examine himself as defence witness getting into the box under Section 315 Cr.P.C. to prove his case. On 26.08.2021, he was unable to appear before the trial Court, on which date, the evidence has been closed.

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4. The learned Additional Public Prosecutor submits that in this case, the evidence of prosecution witnesses has been closed. The petitioner was examined under Section 313 Cr.P.C. on 15.09.2020. Thereafter, he filed a petition in CrI.M.P.No.19 of 2021 to examine himself as defence witness, which was allowed on 08.02.2021. Thereafter, by giving one reason or the other, he had been delaying and not getting into the box. The trial Court finding that the petitioner is using the examination of defence witness, as a reason and delaying the trial, finally on 26.08.2021 closed the defence witness and posted for arguments on 09.12.2021. He further submits that the screenshot of Whatsapp and 65 B Certificate were produced by the petitioner during investigation.

5. This Court finds that the petitioner is facing trial under POCSO Act and statutory presumption is against him and the petitioner should be given an opportunity to put forth his defence to probabalise his case. Further, this Court finds that the case is posted for arguments on 09.12.2021, on which date, the petitioner shall get into the box, examine himself as defence witness and thereafter, for any reason, the petitioner fails to appear, the argument will proceed without any delay. Accordingly, the criminal original petition is disposed of.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Inspector of Police,
CCB II, Chennai,
(Crime No.160 of 2019)
2. The Learned Sessions Judge,
Special Court for Exclusive
Trial of Cases under POCSO Act,
Chengalpattu.
3. The Public Prosecutor,
High Court, Madras.

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